

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Shon H.,

Claimant,

vs.

Inland Regional Center,

Service Agency.

OAH No. 2011040090

DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Bernardino, California on June 13 and 27, 2011.

Rica Salvador, Esq., Deputy Public Defender, represented Claimant Shon H.¹

Julie A. Ocheltree, Esq., Enright & Ocheltree, represented Inland Regional Center, the Service Agency.

The matter was submitted on July 13, 2011.²

¹ Claimant's surname is identified by initial throughout this Decision to protect his confidentiality.

² The record remained open for receipt of Closing Argument. Inland Regional Center's Closing Argument was filed on July 5, 2011, and marked Exhibit 22. Without receipt of Claimant's Final Closing Argument, on July 13, 2011, the record was closed, and the matter was submitted.

ISSUE

Whether Shon H. is eligible to receive regional center services on the basis of Mental Retardation or a condition closely related to Mental Retardation or a condition that requires treatment similar to that required for individuals with Mental Retardation (5th Category)?

FACTUAL FINDINGS

1. Shon H. (Claimant) applied to the Inland Regional Center (Service Agency) for services pursuant to the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) [Lanterman Act]. He asserts that he has a developmental disability.

The Service Agency denied eligibility on March 11, 2011. Claimant requested a hearing on March 31, 2011. After an informal hearing on April 12, 2011, the Service Agency denied Claimant eligibility on April 19, 2011. This action ensued.

2. Claimant appealed the Service Agency's denial of eligibility.

3. Claimant has applied for services previously. The Service Agency denied that request on November 17, 2006.

4. Claimant asserts that he is eligible to receive services on the basis of (1) Mental Retardation and/or (2) has a condition similar to mental retardation and/or requires treatment similar to persons with Mental Retardation (5th Category). He contends that he has achieved scores on intelligence tests that fall in the range of Mild Mental Retardation and at least two reports support this diagnosis. Further, he asserts that the diagnostic tests used to evaluate his adaptive skills are not valid because he "likes to please". He argues that he lacks social skills and has engaged in maladaptive, criminal behavior. Finally, Claimant has been employed a total of two weeks; he has never lived independently; except when he was in custody, Claimant has lived with his mother; "she handled everything."

The Service Agency disputes the foregoing and asserts that Claimant has a learning disability and that, he does not have a developmental disability as defined by the Lanterman Act; therefore he is not eligible to receive services.

5. The evidence in this proceeding includes a variety of reports and the testimony of Paul Greenwald, Ph.D. (Dr. Greenwald), a licensed psychologist. Dr. Greenwald reviewed and interpreted exhibits and rendered an opinion about whether Claimant is eligible to receive services based on the 5th Category.

6. Regarding Mental Retardation, the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) states, in pertinent part:

“The essential features of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitation in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work leisure, health and safety (Criterion B). the onset must occur before 18 years (Criterion C)....

“Significant subaverage intellectual functioning” is defined as an intelligence Quotient (IQ) of 70 or below....

When there is a significant scatter in the subtest scores, the profile of strengths and weaknesses, rather than the mathematically derived full-scale IQ, will more accurately reflect the person’s learning abilities. When there is a marked discrepancy across verbal and performance scores, averaging to obtain a full-scale IQ score can be misleading....

Impairments in adaptive functioning rather than a low IQ are usually the presenting symptoms in individuals with Mental Retardation. Adaptive functioning refers to the standards of personal independence expected for someone in their particular age group, sociocultural background, and community setting. Adaptive functioning may be influenced by various factors, including education, motivation, personality characteristics, social and vocational opportunities and the mental disorders and general medical conditions that may coexist with Mental Retardation.”

7. On January 16, 1997, the La Habra city schools evaluated Claimant. On that date, he was 6 years, 11 months of age. The Kaufman Assessment Battery for Children (KABC), a diagnostic test to evaluate his intellectual ability, was administered. Dr. Greenwald testified that Claimant achieved scores in the average to low average range.

8. When he was 13 years old, a school psychologist, from Deserts Sands Unified School District (District), performed a psychoeducational assessment of Claimant. His intellectual and functional abilities were assessed.

The evaluation included, among other things, interview of Claimant’s mother, review of school records, review of previous assessment records, classroom observations, administration of the Wechsler Intelligence Scale for Children, 3rd Edition (WISC-III), Wechsler Individual Achievement Test, Diagnostic Achievement Battery, Vineland Adaptive Behavior Scale: Survey Edition (Vineland), Test of Visual-Perceptual Skills-Revised, Test of

Auditory Skills – Revised, and Bender Visual-Motor Gestalt Test. Thereafter, the school psychologist issued a report, dated November 5, 2001.³

On the WISC-III, Claimant's obtained verbal IQ of 50 and a performance IQ of 72. The school psychologist reported "[o]verall, the results of the present testing are questionable. Shon scored higher in learning potential three years ago. He [is] just re-entering school after receiving some instruction through independent study."⁴ Dr. Greenwald testified that there is a significant discrepancy in the verbal and IQ scores and agreed with the foregoing findings of the school psychologist.

Also, the school psychologist reported that there was "[s]ignificant subtest scatter" on the IQ test profile and that "his personal strength is nonverbal reasoning when the motor component is taken out."

The school psychologist reported "Shon scored in the Borderline range in nonverbal intellectual functioning.... Full Scale IQ was not computed due to the significant discrepancy between verbal and performance scores."

The school psychologist reported "[w]hen compared to his daily living skills, Shon has a significant discrepancy in reading comprehension, math calculation and spelling."

The school psychologist utilized the Vineland to measure adaptive functioning. She interviewed Claimant's mother for the Vineland. The adaptive skills testing showed a standard score of 91 in Daily Living Skills. The communications score was very low but the school psychologist explained that this was due to academic delays.

The school psychologist concluded, "Based on the results of this evaluation, Shon continues to demonstrate an educational disability – specifically, Specific Learning Disability. Shon's previous intelligence scores were higher than those just obtained. Since he scored average in self-help skills, it suggests that Shon has more learning potential than he was able to demonstrate. Short-term auditory and visual memory are weak...."

9. In 2003, when he was 15 years old, another school psychologist with the District performed a psychoeducational assessment.⁵

³ Exhibit 5

⁴ Exhibit 5

⁵ Exhibit 6

The assessment included (1) observations, (2) records review and (3) administration of the Kaufman Brief Intelligence Scale (K-BIT), Test of Auditory Perceptual Skills Revised: Upper Level, Test of Visual Perceptual Skills Revised: Upper Level and Wechsler Individual Achievement Test (WIAT).

Regarding intellectual functioning, the school psychologist stated:

“Shon was administered the Kaufman Brief Intelligence Scale (K-BIT) which is a brief measure that provides a general idea of intellectual ability. The vocabulary section measures verbal school related skills such as understanding concepts, word knowledge, etc. The matrices section measures nonverbal skills which includes the ability to solve new problems, understand relationships and reason by analogy.”

On the K-BIT, Claimant obtained a Vocabulary score of 65, Matrices score of 80 and a Composite score of 70.

The District psychologist reported that the results of “previous assessments show severe academic delays in reading, writing and math. He continues to exhibit perceptually-based learning disabilities in visual memory and auditory memory which appears to be the causative factor in the current pattern of academic performance.” The school psychologist noted that there is a “severe discrepancy between ability and achievement.... The disability is not the result of visual, hearing, motor impairment, mental retardation or emotional disturbance.”

10. On May 7, 2006, when he was 17 years old, during an arson investigation, after being informed of his Miranda rights, Claimant admitted that he lit fires on the side of the building doors. He watched the fire burn and did not call 911. As a consequence, Claimant was arrested, booked into and detained in the Indio Juvenile Hall. Thereafter, pursuant to Evidence Code section 1017, by Order of the Juvenile Court, Michael Kania, Ph.D. (Dr. Kania) completed an evaluation. As a consequence of referral by Claimant’s criminal attorney, Anita Laura Chatigny, Ph.D. completed a neuropsychological assessment. The Superior Court referred Claimant to the Service Agency for assessment to determine if Claimant was eligible to receive services. Finally, Claimant was evaluated by the Riverside County Probation Department (Probation Department) to determine whether it was appropriate to retain his case in juvenile court or transfer it to adult court. Each of the foregoing completed reports that were admitted as exhibits in this proceeding.

11. Dr. Kania performed his psychological evaluation of Claimant on May 25, 2006.⁶

⁶ Exhibit 8.

Dr. Kania's evaluation consisted of a detailed clinical interview, administration of a "modified mental status examination" and questioning of Claimant regarding his recollection of the events leading to his arrest and subsequent psychological treatment.

It is interesting to note that Claimant denied "the use of all illicit drugs" and reported that he had never used alcohol or been involved in substance abuse treatment.

Claimant reported to Dr. Kania that he had experienced auditory hallucinations and that he was prescribed medication to treat the hallucinations. Claimant reported that he had heard voices as recently as the day before and bit himself as a result of being directed by the voices.

Dr. Kania did not administer IQ tests to Claimant and provided no diagnosis/es. In his report, Dr. Kania stated, in pertinent part:

"The minor's cognitive functioning is intact, but pervasively mildly impaired. His attention, concentration and comprehension are mildly impaired. As noted there appears to be intellectual limitation, with the minor functioning in the borderline to mild mental retardation range. His memory for distant and recent events is essentially intact, although somewhat simplified. Social judgment shows evidence of recent impairment secondary to auditory hallucinations. Insight is lacking.

Diagnostically, one would have to rule out the possibility of borderline intellectual functioning and also consider a possible schizophreniform disorder or brief psychotic disorder."

In Dr. Greenwald's opinion, Dr. Kania's conclusions were reasonable, and Dr. Kania was not diagnosing Claimant, rather he was stating that Claimant needed to be tested to rule out certain conditions.

12. On July 1, 2006, Dr. Chatigny performed a neuropsychological assessment of Claimant.⁷ At the time, Claimant was 17 years 11 months old.

Dr. Chatigny's evaluation included: (1) interview of Claimant and (2) administration of the Wechsler Adult Intelligence Scale III (WAIS-III), Wechsler Memory Scale III, Halstead Reitan Neuropsychological Test Battery, Reitan-Indiana Aphasia Screening Examination and Wide Range Achievement Test-Revised 2.

It is noted that the date stated on Dr. Kania's report is March 25, 2006. However according to the Probation Department report (Exhibit 10), the date on Dr. Kania's report is a mistake and should read May 25, 2006.

⁷ Exhibit 9

When she engaged in neuropsychological tasks, Dr. Chatigny encouraged Claimant to try his best and offer guesses if he was not sure of his response; according to Dr. Chatigny, Claimant did not offer guesses. She reported: “As he encountered particularly challenging tasks, he fell into a pattern of random responding. As this occurred, effort was made to slow the patient down and provide cues to help him. Shon did not appear to benefit from this assistance and quickly fell back into this pattern.” Dr. Greenwald testified that, considering the foregoing report, he questioned the validity of the test results and Claimant’s motivation.

On the WAIS-III, Claimant achieved a verbal IQ of 66 and performance IQ of 77. Despite the significant variability in scores, Dr. Chatigny calculated a full-scale IQ of 66. This is contrary to the DSM-IV-TR (Finding 7).

Dr. Chatigny reported: “His profile is marked by long-standing cognitive deficit associated with Development Disorder. Psychotic features are evident by history and presumed to be a function of this cognitive status.” She does not explain her definition of “developmental disorder.”

Dr. Greenwald testified that, in reports such as Dr. Chatigny’s, normally an Axis I and Axis II diagnosis is provided. Dr. Chatigny’s report does not include such diagnoses.

For the foregoing reasons and other inconsistencies in her report, despite Dr. Greenwald’s interpretation of this report, there are sufficient inconsistencies and lack of clarity in Dr. Chatigny’s report to render it unreliable since she did not testify in this hearing. Therefore this report is disregarded.

13. On November 13, 2006, Dr. Zimmerman performed the psychological assessment on behalf of the Service Agency.⁸ He described his assessment procedure.

- Conducted a clinical interview and assessed Claimant’s mental health symptoms.
- Administered (1) Reynolds Intelligence Assessment Scale (RAIS), (2) Wide Range Achievement Test – 3rd Edition, (3) Blue (WRAT-III), Adaptive Behavior: Street Survival Skills Questionnaire (SSSQ), and (4) Scales of Independent Behavior, Revised, Short Form (SIB-R);
- Reviewed (1) Independent Educational Program (June 15, 2006), (2) Dr. Kania’s psychological evaluation (March 25, 2006) and (3) Dr. Chatigny’s neuropsychological evaluation (July 1, 2006).

In rendering his opinion, among other things, Dr. Zimmerman applied the DSM-IV, considered relevant sections of the Lanterman Act and Title 22 of the California Code of Regulations, and the “Association for Regional Centers Agencies (ARCA) guidelines for 5th

⁸ Exhibit 12

Category as well as the definition for “substantial disability/handicap” published by the Department of Developmental Services.

Regarding his Intellectual Assessment, Dr. Zimmerman reported:

“This examiner administered RAIS according to its standardization protocol. Intellectual abilities range from borderline verbal problem solving to low average nonverbal skills. His overall intellectual ability was noted to be in the upper end of borderline-average skill. Verbal abstract reasoning was seemed to be a relative weakness while visual discernment of essential of non-essential details was a relative strength.”

Dr. Zimmerman administered the SSSQ to evaluate Claimant’s adaptive skills. Dr. Greenwald explained that Claimant did quite well on this test and that Claimant’s results demonstrated that his self-help skills continued to be inconsistent with a diagnosis of mental retardation. Based on the results of the SSSQ and SIB-R, Dr. Zimmerman concluded that Claimant’s “overall adaptive ability was average.”

Dr. Zimmerman made a finding that “Shon’s intellectual profile does not meet diagnostic criteria for mental retardation.” He concluded that Claimant’s “general adaptive levels are seen to be above the level of his intellectual ability.” (*Ibid.*)

By letter, dated November 17, 2006, the Service Agency notified the Probation Department that Claimant was ineligible for regional center services.

14. Claimant was referred for a confidential psychological evaluation by a Superior Court judge under Evidence Code section 1017. William H. Jones, Ph.D. (Dr. Jones) performed the assessment on September 10, 2009, when Respondent was 21 years old.⁹ At that time, Claimant was charged with violating Penal Code section 484 (theft), Penal Code section 459 (burglary) and Penal Code section 272, subdivision (a)(1) (encouraging a minor to commit a crime). Also, there was an allegation of violation of probation.

Dr. Jones’ assessment included, among other things, a psychological interview of Claimant, an interview of his mother, administration of the WAIS-III and Wide Range Achievement Test – III, and Trails A and B.

Claimant’s mother reported that he began using alcohol at age 15. Claimant reported that he began using marijuana at age 16.¹⁰ Also, Claimant stated that when he was 17 years of age, he used methamphetamines a few times and that he believed that it caused him to hear voices. In Dr. Jones’ opinion, Claimant “probably underreported drug and alcohol

⁹ Exhibit 15

¹⁰ Exhibit 15

abuse.” In Dr. Greenwald’s opinion, Claimant’s substance abuse likely affected his performance index speed.

Dr. Jones noted that Claimant had “limited capacity for expressive and receptive language.”

On the WAIS-III, Claimant obtained Verbal IQ of 70, Performance IQ of 74 and Full Scale IQ of 69. Regarding the test results, Dr. Jones stated “[w]hat is quite striking here is that Verbal Conceptual Functioning is much weaker than Perceptual Organization. This strongly indicates that” Shon H. “has a significant thinking problem in terms of processing verbal information.” Also, he reported that when administering the Trail Making tests, Claimant was “able to do Part A correctly within the allocated time. He was able to do Part B correctly, but took at [sic] extended period of time to do this. The results indicated likely neuropsychological dysfunction. This is likely responsible for some of his impulsivity and poor judgment.”¹¹

In his Summary and Conclusions, Dr. Jones stated, in pertinent part:

“Shon H. is a 21 year old, White male with a long history of All-Day Special Education while in school. Intellectually, he is somewhere in the mildly mentally retarded range to the low borderline range. However, he has significantly weaker verbal conceptual ability. He has difficulty in processing language and other verbal information. He has a long history of behavior problems at school. He appears to be alcoholic and has also abused methamphetamine and marijuana. The methamphetamine usage in the past apparently touched off a psychotic episode with hallucinations, and he had a psychiatric hospitalization for that. He denies current hallucinations, and there were no clear indications of delusional thinking. Psychological testing indicates likely neuropsychological dysfunction. For his limited intellectual level, he has quite poor judgment and shows significant impulsivity. He is very emotionally labile. His neuropsychological dysfunction may be long term in origin or may be the effect of methamphetamine abuse. His mother reports aggressive acting out behavior at home. He has Adult Attention-Deficit Disorder and also appears to have a Mood Disorder. His use of alcohol and marijuana are likely to exacerbate his impulsivity and poor judgment.”

Dr. Jones recommended (1) continued treatment at Mental Health and (2) involvement in a drug and alcohol rehabilitation program. He did not make a diagnosis.

15. On October 27, 2010, Kelly Grotzky (Grotzky), a licensed marriage and family therapist, prepared a “Mental Health Court Evaluation Summary”. She did not state the source of her referral or the bases for review. From the report, it appears that she performed a document review but she does not identify the documents.

¹¹ Exhibit 15

At the time of Grotsky's evaluation, Claimant had been incarcerated, charged with violation of Penal Code section 314, subdivision (l) [indecent exposure], Penal Code section 647, subdivision (A) [lewd conduct], and Penal Code section 484 [theft].

In her report, Grotsky provided a thorough review of Claimant's relevant history. She made several DSM diagnoses, including Mild Mental Retardation. However, there is no evidence that her opinions were based on diagnostic tests or that she was qualified to perform such tests. As such, her diagnoses (including Mild Mental Retardation) are disregarded.

16. Edward B. Pflaumer, Ph.D. (Dr. Pflaumer), a licensed psychologist, assessed Claimant on March 4, 2011, and rendered an opinion regarding whether he has a developmental disability.

Claimant argued that Dr. Pflaumer's report should be disregarded because the California Board of Psychology (Board) disciplined Dr. Pflaumer, effective January 13, 2011. According to the Board's Decision and Order, as a consequence of certain facts and violations of law, the Board placed Dr. Pflaumer on five years probation on terms and conditions. A copy of the Board's Decision and Order (Exhibit A) was admitted in this case. Dr. Pflaumer performed the assessment of Claimant while he was on probation.

There is no evidence that Dr. Pflaumer was in violation of probation or that his qualifications to perform the assessment of Claimant has been impacted by the discipline. Given the foregoing, the Board's discipline of Dr. Pflaumer is not relevant in this case.

17. Dr. Pflaumer's assessment included:

- Administration of the WAIS-III, Test of Nonverbal Intelligence-3 (TONI-3), Adaptive Behavior: Street Survival Skills Questionnaire (SSSQ), Wide Range Achievement Test-3 (WRAT3),
- Review of records¹²
- Diagnostic interview

On the WAIS-III, Claimant obtained a Verbal IQ of 72, a Performance IQ of 77 and a Full Scale IQ of 72. On the TONI (a nonverbal intelligence test), he earned a score of 85.

Regarding his intellectual assessment, Dr. Pflaumer reported:

"Shon earned a full scale IQ of 72 on the WAIS-III, which falls in the low end of the borderline range. His nonverbal skills were slightly stronger than his verbal skills. In order to reduce the influences of language and culture, the TONI-3 was given and he earned a much stronger score of 85, which fell in the low average range. Shon's reading skills were at the level expected for his

¹² Dr. Pflaumer did not describe the documents that he reviewed.

overall ability and history of skipping school, at grade 5. However, his spelling and arithmetic skills were somewhat lower at grade 3 and 2 respectively. The spelling and arithmetic scores are enough below expectations that they qualified for a classification of learning disability. Shon's independent living skills were measured with three subtests from the SSSQ all of which fell in the low average to the average range. Overall, none of the data shows that Shon is mentally retarded."

18. Claimant has received special education services at least since 1998 based on learning disabilities. At no time has he qualified to receive special education services on the basis of mental retardation. There is no evidence that a qualified practitioner using appropriate diagnostic tools has diagnosed Claimant with Mental Retardation.

19. Insufficient evidence was offered to establish that Claimant qualifies to receive regional center services based on a diagnosis of Mental Retardation.

20. Welfare and Institutions Code section 4512 subdivision (a) does not define what constitutes a condition that is closely related to mental retardation, or one that requires treatment similar to that provided to mentally retarded individuals, commonly referred to as the "5th Category" of developmental disability. The Association of Regional Center Agencies provides guidelines for determining 5th Category eligibility for California regional centers (Guidelines).

While the Legislature did not define this category, it requires that the condition be "closely related" to mental retardation. The definitive characteristic of mental retardation is the significant degree of cognitive and adaptive deficit. Thus, to be closely related to (or similar to) mental retardation, as specified in Title 17, California Code of Regulations, section 54000, there must be a qualitative or functional correlation of cognitive and/or adaptive deficits that render the individual's disability like that of a person with Mental Retardation. This is not a simple and strict replication of all the cognitive and adaptive deficits that render the individual's disability like that of a mentally retarded person. The 5th Category requires an analysis of Claimant's cognitive and adaptive functioning, and whether that renders his functioning in a manner that is like that of a mentally retarded individual.

In addition to subaverage intellectual functioning, the person must demonstrate significant deficits in adaptive skills, including, but not limited to, communication, learning, self-care, mobility, capacity for independent living and economic self-sufficiency. Adaptive behavior deficits are established based on the exercise of clinical judgment supplemented by formal diagnostic tests (e.g., Vineland ABS, AAMR-ABS) when necessary. Adaptive deficits are skill deficits related to intellectual limitations that are expressed by an inability to perform essential tasks within adaptive domains or by an inability to perform those tasks with adequate judgment. Skill deficits are not performance deficits due to factors such as physical limitations, psychiatric conditions, socio-cultural deprivation, poor motivation or limited experience.

Dr. Greenwald testified that Claimant's intellectual profile, along with the high score of non-verbal functioning attained by Dr. Pflaumer along with high sub-test scores achieved on other evaluations, in conjunction with the average daily living skills do not support a finding that Claimant has a condition similar to mental retardation.

21. The Guidelines provide that, in determining whether an individual requires "treatment similar to that required for mentally retarded individuals," the team should consider the nature of the training and intervention that is most appropriate for the individual that has global cognitive deficits. Claimant's deficits are not global; he has strengths in certain areas, with IQ subtest scores in the average range. In addition, certain adaptive skills are average. As such, Claimant does not have global deficits and therefore does not require treatment similar to an individual with mental retardation.

22. The Service Agency determined that Claimant did not qualify for regional center services on the basis of the 5th Category.

23. Claimant offered no credible evidence to refute the Service Agency's evidence or otherwise establish that he qualifies to receive services from the Service Agency on the basis of the 5th Category.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4512 states:

(a) "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

2. California Code of Regulations, title 17, section 54000, states in pertinent part:

(a) 'Developmental Disability' means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation.

(b) The Developmental Disability shall:

- (1) Originate before age eighteen;
- (2) Be likely to continue indefinitely;
- (3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

3. California Code of Regulations, title 17, section 54001, states in pertinent part:

(a) “Substantial disability” means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person’s age:

- (A) Receptive and expressive language;
- (B) Learning;
- (C) Self-care;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living;
- (G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parent . . . educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

4. California Code of Regulations, title 17, section 54002 states, “[c]ognitive’ as used in this chapter means the ability of an individual to solve problems with insight, to adapt to new situations, to think abstractly and to profit from experience.”

5. As Claimant seeks eligibility, he bears the burden of proof by a preponderance of the evidence. (Evid. Code, §§ 500, 115.)

6. According to the evidence, Claimant has a learning disability. There is no credible evidence in the record to establish that Claimant has intellectual disability (mental retardation) or a 5th Category condition (disabling condition closely related to mental retardation or that he requires treatment similar to that required for individuals with mental retardation (see Welf. & Inst. Code, § 4512, subd. (a)). Claimant did not establish that he is eligible to receive regional center services under any statutory category of developmental disability, including intellectual disability (mental retardation) or 5th Category. Absent such evidence, denial of Claimant’s appeal is appropriate.

ORDER

The appeal of Shon H. is denied. Claimant is not eligible to receive services from the Inland Regional Center.

NOTICE

This is the final administrative decision. This Decision binds both parties. Either party may appeal this Decision to a Court of competent jurisdiction within 90 days.

DATED: August 24, 2011

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings